

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIE JOSEPH JONES,

Defendant-Appellant.

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UNPUBLISHED

May 24, 2011

No. 297110

Jackson Circuit Court

LC No. 09-005679-FH

Before: OWENS, P.J., and O'CONNELL and METER, JJ.

PER CURIAM.

Defendant appeals by right his conviction by the trial court, after a bench trial, of delivery/manufacture of less than 50 grams of heroin, MCL 333.7401(2)(a)(iv), and maintaining a drug house, MCL 333.7405d. He also appeals his sentence to 46 to 240 months' imprisonment for the former and 46 to 180 months' imprisonment for the latter. We affirm.

Police officers executed a search warrant at a small house in which defendant, his girlfriend at the time, and their infant son were living. On the queen-size bed that took up most of the house's only bedroom, officers found approximately two thousand dollars' worth of heroin, some of which was packaged in one-gram baggies, and a digital scale with heroin residue on it. After defendant was arrested and informed of his rights, defendant offered to find "somebody bigger than him," and officers strongly suggested to defendant that he would be granted significant leniency if he could obtain a high-level dealer. Defendant attempted to obtain someone to bring a large quantity of heroin, but he was unsuccessful. Defendant nevertheless consistently maintained that he had nothing to do with the drugs actually found in the house. Defendant's girlfriend informed the police that defendant assisted in selling and distributing the drugs, but she later explained that she had been "pretty high" at the time and that the drugs were solely hers. The trial court rejected defendant's mere presence defense.

Defendant first argues that there was insufficient evidence to convict him. We disagree. "The evidence is sufficient to convict a defendant when a rational factfinder could determine that the prosecutor proved every element of the crimes charged beyond a reasonable doubt." *People v Cain*, 238 Mich App 95, 117; 605 NW2d 28 (1999). When reviewing a claim of insufficient evidence, this Court views the evidence in the light most favorable to the prosecution. *People v Meshell*, 265 Mich App 616, 619; 696 NW2d 754 (2005).

The trial court observed that the house was very small. It contained a single bedroom that was mostly taken up by the bed on which the drugs were found. Some of defendant's clothing—including underwear—was found in the bedroom, as well as in a closet in the bathroom. The bathroom was "right off the bedroom." We agree with the trial court that, under the circumstances, it is inconceivable that defendant could have been unaware of the heroin, and given his history, it is equally inconceivable that he would have been unaware that it was in a quantity and packaging indicative of resale rather than personal use. Furthermore, although defendant's girlfriend took responsibility for the drugs, she indicated that defendant was aware that she was selling them.

A defendant's mere presence where a controlled substance is found will not establish possession without some additional link between the defendant and the substance. *Meshell*, 265 Mich App at 622. Constructive possession can be shown by the totality of the circumstances indicating "a sufficient nexus between the defendant and the controlled substance," and this nexus may be established by circumstantial evidence. *Id.* A person constructively possesses something if he or she knows about that thing and can reasonably readily access it. *People v Hill*, 433 Mich 464, 470-471; 446 NW2d 140 (1989); *People v Brown*, 279 Mich App 116, 136-137; 755 NW2d 664 (2008). Despite defendant's girlfriend's testimony that defendant mostly slept in the living room, he apparently had free access to and use of the bedroom, irrespective of where he slept. We therefore find the evidence sufficient to show that he knew about the drugs and had the ready means to access them.

Defendant "may be deemed to keep and maintain a drug house if that person has the ability to exercise control or management over the house." *People v Bartlett*, 231 Mich App 139, 152; 585 NW2d 341 (1998). This does require more than merely "some control" over some part of a given property. *Id.* Furthermore, defendant must have knowledge of the drug use or drug transactions for which the house is being used. MCL 333.7405(1)(d). The trial court conceded that the evidence of defendant's control or management over the house was a closer call. However, defendant had some clothing and personal paperwork in the bedroom, and he was helping raise his and Ms. Collins's child in the house, strongly suggesting that he did have some measure of control. We agree with the trial court that the evidence is sufficient.

Defendant next argues that the trial court erred in scoring his sentencing guidelines by scoring Offense Variable (OV) 14 at 10 points. Defendant waived this issue by explicitly agreeing with the guidelines calculations. *People v Carter*, 462 Mich 206, 216; 612 NW2d 144 (2000). This generally precludes review. *People v Riley*, 465 Mich 442, 448-449; 636 NW2d 514 (2001). However, we observe that the trial court made an unambiguous record that it intended to sentence defendant to the maximum sentence allowable under the guidelines, whatever that maximum was, and did so. This is significant because even if OV 14 was improperly scored, recalculating defendant's guidelines range would only affect the lower end of that range, not the maximum. We do not now decide whether OV 14 was misscored, but we do find that if it was, the error would be harmless.

Defendant finally argues that the trial court violated his rights by admitting into evidence a recording of his "confession" to the arresting police officers. Defendant stipulated to the admission of this recording, objecting only to a portion of it containing statements made by his girlfriend, and that portion was not admitted. "A party cannot stipulate a matter and then argue

on appeal that the resultant action was error.” *Chapdelaine v Sochocki*, 247 Mich App 167, 177; 635 NW2d 339 (2001). However, it appears that the only reason for defendant’s objection at this time is the people’s hyperbolic characterization of his statements to officers as, “[f]or all intents and purposes, defendant confessed.” Although the recording constituted significant evidence, that evidence was indirect, and it was in no way a confession: notwithstanding defendant’s attempt to obtain a high-level dealer in exchange for officers’ promises of leniency, defendant consistently maintained that he had nothing to do with the drugs that were actually found in the house. The trial court does not appear to have treated it as a confession, either.

We find the evidence sufficient to support defendant’s convictions, and we find no errors warranting reversal. Affirmed.

/s/ Donald S. Owens  
/s/ Peter D. O’Connell  
/s/ Patrick M. Meter